

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION

EMILIA STRONG SYKES,)	
et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.
)	3:06cv582-MHT
BENJAMIN F. PAYTON, etc.,)	(WO)
et al.,)	
)	
Defendants.)	

ORDER

This cause is currently before the court on defendants' motion to strike the amended complaint. The plaintiffs filed their original complaint on June 29, 2006. On July 10, 2006, the defendants filed a motion to dismiss. On July 12, 2006, the plaintiffs filed the amended complaint in question. The defendants have not filed an answer to the original complaint.

Federal Rule of Civil Procedure 15 provides, "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served"

The defendants argue that the amended complaint should be struck because it was filed after the defendants filed their motion to dismiss.

However, it "is well established in [the Eleventh Circuit] that a motion to dismiss is not considered a responsive pleading for purposes of rule 15(a)." Fortner v. Thomas, 983 F.2d 1024, 1032 (11th Cir. 1993). Thus, the plaintiffs had a right to amend their complaint because the defendants had not filed a responsive pleading, only a motion to dismiss.

Accordingly, it is ORDERED that the defendants' motion to strike (Doc. No. 19) is denied.

DONE, this the 27th day of July, 2006.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE